

PART 155—DEFENSE INDUSTRIAL PERSONNEL SECURITY CLEARANCE PROGRAM

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APPENDIX A TO PART 155—ADDITIONAL PROCEDURAL GUIDANCE

AUTHORITY: E.O. 10865, 3 CFR 1959-1963 Comp., p. 398, as amended by E.O. 10909, 3 CFR 1959-1963 Comp., p. 437; E.O. 11382, 3 CFR 1966-1970 Comp., p. 690; and E.O. 12829, 3 CFR 1993 Comp., p. 570.

SOURCE: 57 FR 5383, Feb. 14, 1992, unless otherwise noted.

§ 155.1 Purpose.

This part updates policy, responsibilities, and procedures of the Defense Industrial Personnel Security Clearance Review Program implementing E.O. 10865, as amended.

[57 FR 5383, Feb. 14, 1992, as amended at 59 FR 48565, Sept. 22, 1994]

§ 155.2 Applicability and scope.

This part:

(a) Applies to the Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Inspector General of the Department of Defense (IG, DoD), and the Defense Agencies (hereafter referred to collectively as “the DoD Components”).

(b) By mutual agreement, also extends to other Federal Agencies that include:

- (1) Department of Agriculture.
- (2) Department of Commerce.
- (3) Department of Interior.
- (4) Department of Justice.
- (5) Department of Labor.
- (6) Department of State.
- (7) Department of Transportation.
- (8) Department of Treasury.
- (9) Environmental Protection Agency.
- (10) Federal Emergency Management Agency.
- (11) Federal Reserve System.
- (12) General Accounting Office.
- (13) General Services Administration.

(14) National Aeronautics and Space Administration.

(15) National Science Foundation.

(16) Small Business Administration.

(17) United States Arms Control and Disarmament Agency.

(18) United States Information Agency.

(19) United States International Trade Commission.

(20) United States Trade Representative.

(c) Applies to cases that the Defense Industrial Security Clearance Office (DISCO) forwards to the “Defense Office of Hearings and Appeals (DOHA)” for action under this part to determine whether it is clearly consistent with the national interest to grant or continue a security clearance for the applicant.

(d) Provides a program that may be extended to other security cases at the direction of the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence (ASD(C³I)).

(e) Does not apply to cases in which:

(1) A security clearance is withdrawn because the applicant no longer has a need for access to classified information;

(2) An interim security clearance is withdrawn by the DISCO during an investigation; or

(3) A security clearance is withdrawn for administrative reasons that are without prejudice as to a later determination of whether the grant or continuance of the applicant’s security clearance would be clearly consistent with the national interest.

(f) Does not apply to cases for access to sensitive compartmented information or a special access program.

[57 FR 5383, Feb. 14, 1992, as amended at 59 FR 35464, July 12, 1994]

§ 155.3 Definitions.

(a) *Applicant.* Any U.S. citizen who holds or requires a security clearance or any immigrant alien who holds or requires a limited access authorization for access to classified information needed in connection with his or her employment in the private sector; any U.S. citizen who is a direct-hire employee or selectee for a position with

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the North Atlantic Treaty Organization (NATO) and who holds or requires NATO certificates of security clearance or security assurances for access to U.S. or foreign classified information; or any U.S. citizen nominated by the Red Cross or United Service Organizations for assignment with the Military Services overseas. The term “applicant” does not apply to those U.S. citizens who are seconded to NATO by U.S. Departments and Agencies or to U.S. citizens recruited through such Agencies in response to a request from NATO.

(b) *Clearance Decision.* A decision made in accordance with this part concerning whether it is clearly consistent with the national interest to grant an applicant a security clearance for access to Confidential, Secret, or Top Secret information. A favorable clearance decision establishes eligibility of the applicant to be granted a security clearance for access at the level governed by the documented need for such access, and the type of investigation specified for that level in 32 CFR part 154. An unfavorable clearance decision denies any application for a security clearance and revokes any existing security clearance, thereby preventing access to classified information at any level and the retention of any existing security clearance.

§ 155.4 Policy.

It is DoD policy that:

(a) All proceedings provided for by this part shall be conducted in a fair and impartial manner.

(b) A clearance decision reflects the basis for an ultimate finding as to whether it is clearly consistent with the national interest to grant or continue a security clearance for the applicant.

(c) Except as otherwise provided for by E.O. 10865, as amended, or this part, a final unfavorable clearance decision shall not be made without first providing the applicant with:

(1) Notice of specific reasons for the proposed action.

(2) An opportunity to respond to the reasons.

(3) Notice of the right to a hearing and the opportunity to cross-examine

persons providing information adverse to the applicant.

(4) Opportunity to present evidence on his or her own behalf, or to be represented by counsel or personal representative.

(5) Written notice of final clearance decisions.

(6) Notice of appeal procedures.

(d) Actions pursuant to this part shall cease upon termination of the applicant's need for access to classified information except in those cases in which:

(1) A hearing has commenced;

(2) A clearance decision has been issued; or

(3) The applicant's security clearance was suspended and the applicant provided a written request that the case continue.

[57 FR 5383, Feb. 14, 1992, as amended at 59 FR 48565, Sept. 22, 1994]

§ 155.5 Responsibilities.

(a) The Assistant Secretary of Defense of Command, Control, Communications and Intelligence shall:

(1) Establish investigative policy and adjudicative standards and oversee their application.

(2) Coordinate with the General Counsel of the Department of Defense (GC, DoD) on policy affecting clearance decisions.

(3) Issue clarifying guidance and instructions as needed.

(b) The General Counsel of the Department of Defense shall:

(1) Establish guidance and provide oversight as to legal sufficiency of procedures and standards established by this part.

(2) Establish the organization and composition of the DOHA.

(3) Designate a civilian attorney to be the Director, DOHA.

(4) Issue clarifying guidance and instructions as needed.

(5) Administer the program established by this part.

(6) Issue invitational travel orders in appropriate cases to persons to appear and testify who have provided oral or written statements adverse to the applicant relating to a controverted issue.

(7) Designate attorneys to be Department Counsels assigned to the DOHA